

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARMANDO SERRANO,

Plaintiff,

vs.

REYNALDO GUEVARA, et al.,

Defendants.

No. 17 C 2869

JOSE MONTANEZ,

Plaintiff,

vs.

REYNALDO GUEVARA, et al.,

Defendants.

No. 17 C 4560

March 19, 2019
Chicago, Illinois
9:50 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 17 C 2869, Serrano versus Guevara; and 17
3 C 4560, Montanez versus Guevara.

4 MR. AINSWORTH: Good morning, Your Honor. Russell
5 Ainsworth appearing on behalf of plaintiff, Jose Montanez.

6 MS. ROSEN: Good morning, Your Honor. Eileen Rosen
7 on behalf of Defendant City of Chicago.

8 MS. NIKOLAEVSKAYA: Judge, Assistant State's Attorney
9 Yulia Nikolaevskaya, N-i-k-o-l-a-e-v, as in Victor, s-k-a-y-a,
10 on behalf of Cook County and John Dillon.

11 MR. ZIBOLSKI: Good morning, Judge. Kevin Zibolski
12 on behalf of Defendant Guevara.

13 MR. KIVETZ: Good morning, Your Honor. Jeff Kivetz
14 on behalf of Defendants Mingey and Halvorsen.

15 MR. HIRST: And good morning, Judge. Morgan Hirst on
16 behalf of Matt Coghlan.

17 THE COURT: We don't have Ms. Bonjean. Do we have
18 anybody on behalf of Mr. Serrano?

19 MR. AINSWORTH: If Ms. Bonjean hasn't made
20 arrangements to call in --

21 THE CLERK: Bear with me for one second.

22 THE COURT: Sure.

23 (Pause. Court conferring with his clerk.)

24 THE COURT: Let's take a minute and see if we can
25 track down Ms. Bonjean and get her on the phone. We may need

1 your help to get a good phone number for her, though.

2 MR. AINSWORTH: Thank you, Judge.

3 THE COURT: So as soon as she is on the line, I'll
4 come back out here.

5 MS. ROSEN: Thanks, Judge.

6 (Recess from 9:52 a.m. until 9:58 a.m.)

7 THE CLERK: Recalling 17 C 2869, Serrano versus
8 Guevara; and 17 C 4560, Montanez versus Guevara.

9 THE COURT: Okay. Good morning, everyone. We got
10 the appearances on the record that we were able to get earlier.

11 I can give you a ruling on the motion to bifurcate;
12 and after I do that, I'd like an update on what's been
13 happening.

14 I understand there were issues with the Rankins
15 deposition most recently. We can talk about what else is
16 happening. But let me give you the ruling on the motion to
17 bifurcate.

18 The City could have moved to bifurcate earlier. The
19 City has at least told plaintiffs' counsel as early as March of
20 2018 that it intended to move to bifurcate, but the City didn't
21 make the motion until this year. I have some guesses as to why
22 the City waited, but my preference would be that we resolve
23 these kinds of issues earlier in the case.

24 There is some value to waiting until now. Because at
25 this point, discovery should be complete except for policy- or

1 practice-related discovery. There are some items related to
2 the claims against the individual defendants that still need to
3 be completed. But other than a rather vague statement in the
4 plaintiffs' brief that *Mone11* overlaps with individual
5 defendant discovery, there is no concrete information offered
6 by plaintiffs to suggest to me that discovery against the
7 individual defendant officers is incomplete.

8 At this stage of the cases, there should be no
9 disputes about whether discovery is relevant to the individual
10 defendants' claims or *Mone11* claims, and those kinds of fights
11 that sometimes come early in a case shouldn't be happening at
12 this point in the cases.

13 So I -- there have been some -- there is some value
14 to waiting until now to address the issue of whether *Mone11*
15 should be bifurcated. I still would prefer if the City were
16 consistent in its timing and approach to requesting
17 bifurcation, particularly in a case like these, in cases like
18 these where there are other plaintiffs in other cases with
19 overlapping defendants and overlapping theories. If the City
20 were so concerned about costs, one would think it would attempt
21 early coordination across these different cases.

22 But plaintiffs have not been prejudiced by the City's
23 delay in seeking bifurcation. I am persuaded that formal
24 requests targeting *Mone11* theories have only recently been
25 propounded, and any sunk costs in developing *Mone11* theories to

1 date don't change the calculus for me as to whether bifurcation
2 now could still expedite and economize these cases.

3 At a high level of generality, bifurcation is
4 disfavored, but if it can expedite and economize, it is an
5 available option, and I am persuaded that bifurcation will get
6 us to resolving these cases sooner.

7 I reject plaintiffs' premise that the *Mone* theories
8 will be tried no matter what happens with the individual
9 liability claims. All of the constitutional violations alleged
10 require culpable conduct by one or more of the individual
11 defendants. The only *Mone* theory that plaintiffs argue might
12 support municipal liability without individual liability is the
13 suppression of evidence kept in street files, but I don't agree
14 that that theory can be separated from individual liability.

15 Constitutional deprivation is the suppression of
16 exculpatory evidence that the individual defendants knew
17 existed. If the individual defendants put exculpatory evidence
18 in a street file, but did nothing to disclose it to the
19 prosecutors, they violated *Brady*, even if the City's practice
20 of failing to disclose street files and the City's practice of
21 having insufficient or ineffective subpoena compliance also
22 caused the non-disclosure.

23 And all of the other theories, *Mone* theories raised
24 in the complaint would also require individual liability, and
25 the plaintiffs don't make any argument about any of the other

1 *Mone* theories, so I take that as, effectively, a concession
2 that all of the *Mone* theories would require individual
3 liability.

4 I don't ignore the City's offer of a consent judgment
5 against it. That meaningfully changes the economic value of
6 the *Mone* claim, and that is a factor for me when considering
7 whether bifurcation can expedite and economize the cases. If
8 plaintiffs win against one or more of the City defendants, the
9 plaintiffs will be compensated for their injuries.

10 Plaintiffs won't have a financial benefit from
11 pursuing *Mone* claims at that point. So I expect if
12 plaintiffs win against an individual, it is not likely that the
13 time and expense of *Mone* discovery and a trial will be
14 something that anyone would want to bear. It would not strike
15 me as a reasonable expenditure of attorney time and resources
16 under those circumstances.

17 If plaintiffs do not win against an individual City
18 defendant, that will be because of a finding that no
19 constitutional violation occurred. It would not permit a
20 verdict against the City.

21 And this circles back to the -- the underlying
22 premise of all of this is that I don't agree that any of the
23 constitutional violations here could be committed without
24 culpability of one or more of the individual defendants.

25 And I don't see qualified immunity as being a likely

1 issue. But I'll talk about qualified immunity in a minute.

2 There is no Seventh Amendment problem because a
3 *Mone11* jury would not have to revisit whether there was or was
4 not a constitutional violation. That will have been decided.
5 Plaintiffs will have a full opportunity to litigate that
6 question and have it decided by a jury. A separate trial on
7 whether a municipal policy caused that violation would not
8 deprive plaintiffs of a jury trial.

9 So because I am operating on a different premise from
10 the plaintiffs, namely, I don't think litigating *Mone11* is a
11 foregone conclusion, and I don't agree that *Mone11* liability
12 can exist without individual liability, I balance the various
13 factors a little differently than the plaintiffs, and I
14 conclude that the cases as a whole can be expedited and
15 economized by bifurcation.

16 First, the existing *Mone11* theories would require
17 time and expense that outweighs the benefits of pursuing
18 *Mone11*.

19 I absolutely agree that the City should not be
20 skirting around a reckoning for its unconstitutional
21 practices -- I get that -- but this is not an injunctive relief
22 case, it's not a consent decree case. The deterrence value and
23 the public virtue of individual plaintiffs pursuing *Mone11*
24 cases over the practices in these particular cases is, in my
25 view, not enough to justify the time and expense of litigating

1 them when the City will make plaintiffs whole and accept a
2 judgment against it if their rights were violated. This is a
3 civil damages lawsuit, and we should be trying to make
4 plaintiffs whole for the injuries they suffered as soon as we
5 can.

6 The noneconomic value of *Mone11*, of the *Mone11* claim,
7 is real. The City does need to have a reckoning for its
8 practices. And I think it's in the long-term public interest
9 for there to be a reconciliation between the police and the
10 policed, but I am not persuaded that these cases move toward
11 that interest in a cost-effective way.

12 Just because individual plaintiffs can resort to
13 Section 1983 and *Mone11* liability doesn't mean that that theory
14 is always a good use of resources. Rules 1 and 42 contemplate
15 that courts should try to bring costs and time down. There is
16 much *Mone11* discovery that remains to be done, from what I see
17 in the briefs, and it seems likely to be contentious and
18 time-consuming.

19 Plaintiffs haven't offered any concrete examples of
20 what they argue will be duplicative discovery. There is an
21 argument that there will be two rounds of litigation and
22 discovery over the same issues, but I don't see it. Everything
23 will happen once. And bifurcation will allow us to resolve the
24 question of whether a constitutional violation occurred sooner.

25 The delay from adjudicating *Mone11* is not prejudicial

1 or not sufficiently prejudicial to me because there is a strong
2 likelihood that adjudicating *Mone* won't be necessary at all.

3 Now, that said, I don't agree with the City that a
4 trial of *Mone* on the individual defendants would be unfairly
5 prejudicial to the defense. That's not persuasive to me.
6 Trials can be managed in a way that avoids unfair prejudice.
7 But that doesn't mean that the balance of prejudice from
8 bifurcation harms the plaintiffs. I do believe that a trial of
9 the individual defendants can be shorter than a trial that
10 included *Mone* theories, and I believe that resolving the
11 constitutional violation will result in plaintiffs being
12 compensated, if appropriate, and all of that inures to the
13 benefit of plaintiffs.

14 What plaintiffs lose from bifurcation is the
15 opportunity for the intangible victory, and I appreciate that,
16 but that doesn't strike me as cost-effective when the City has
17 agreed to pay if the Constitution was violated.

18 But let's talk about qualified immunity. The
19 individual defendants have not waived qualified immunity, so I
20 can't say for certain that it's not an issue, but I believe we
21 can know whether qualified immunity is realistic before a trial
22 of the individual defendants.

23 If there are factual disputes precluding pretrial
24 resolution, I believe we can fashion a verdict form that gets
25 us a finding that will trigger the City's consent to a

1 judgment, thereby assuring that plaintiffs will be made whole
2 even in the unlikely event of a successful qualified immunity
3 defense.

4 But I may revisit that. If the way the individual
5 defendants litigate this case makes me think that qualified
6 immunity is not amenable to resolution in a way that triggers
7 the City's offer of a consent judgment, if that happens, I will
8 undue the bifurcation and we'll do it all at the same time. I
9 am just making a bet here that I don't think that that's going
10 to happen. But if it does, then we'll -- then I'll undo the
11 bifurcation.

12 The motion to bifurcate is granted without prejudice
13 to revisiting bifurcation in advance of trial of the individual
14 defendants.

15 *Mone* discovery and merits litigation on the *Mone*
16 theories are stayed.

17 So where are things on the discovery front? I know
18 that Judge Cox has supervision of it, but since you're all
19 here -- and I know there was an issue recently where you called
20 in because of the Rankins deposition. So what's been
21 happening?

22 MS. ROSEN: Judge, before we get to that, we had
23 filed a motion that's noticed for tomorrow. Obviously, that's
24 now mooted by your ruling today.

25 THE COURT: Yeah. That motion is denied.

1 MS. ROSEN: Okay. Then if we can --

2 MR. AINSWORTH: So we have a fact discovery cutoff of
3 June 3rd. We all went to Memphis last week and we deposed
4 Timothy Rankins, and it went just fine. There were plenty of
5 chairs. We had an overabundance of chairs, in fact. And they
6 allowed the videographer in.

7 And so from plaintiffs' perspective, where we are is
8 we're on a sprint to June 3rd and we're going to get everything
9 done and get to trial as soon as possible and have a trial.

10 THE COURT: Anything -- any other updates from the
11 defense?

12 MS. ROSEN: No. I mean, I think that's where we all
13 are. There's, you know -- I don't know -- maybe a dozen or so
14 depositions and issues that we're still working through, but
15 everybody is working very hard to meet that June 3rd deadline
16 and --

17 MR. AINSWORTH: And we will meet it, Judge.

18 And I think it also appropriate for the Court to --
19 you know, in some of these cases, we spend an awful lot of
20 paper briefing summary judgment where there really aren't
21 summary judgment issues, or, you know, we all know that some of
22 the claims are absolutely going to go to trial, and Rule 50
23 exists, and perhaps the Court would entertain a conference for
24 the Court or some way to really assess out whether full-on, you
25 know, 60-page briefs from the parties on summary judgment to

1 just create a pile of paper for the Court to wade into is
2 really appropriate here.

3 THE COURT: You're saying all the right things to
4 your audience about keeping the --

5 MR. AINSWORTH: I mean, it's --

6 THE COURT: -- volume down and all that --

7 MR. AINSWORTH: We've seen this --

8 THE COURT: -- and I --

9 MR. AINSWORTH: -- over and over in these --

10 THE COURT: -- appreciate it.

11 MR. AINSWORTH: -- similar cases.

12 THE COURT: I don't disagree with you.

13 MR. AINSWORTH: Yeah.

14 THE COURT: I was going to ask the defense: Well,
15 what's your plan? Are you going to -- are there individual
16 defendants that are going to articulate some theories? Might
17 there be an opportunity for the parties to talk about what
18 theories do the plaintiffs really want to pursue at trial? And
19 maybe winnow the case down in a way that would obviate the need
20 to litigate certain summary judgment questions.

21 So -- go ahead.

22 MR. HIRST: Excuse me, Judge. On behalf of Matt
23 Coghlan, the trial prosecutor -- Morgan Hirst -- we will almost
24 undoubtedly file a summary judgment motion.

25 We're happy to talk with Mr. Ainsworth and Ms.

1 Bonjean in advance to resolve those issues. I have some belief
2 as to how that will go, but I'm happy to have that conversation
3 and work through it. But I'm confident we will end up filing
4 something. I don't want to speak on behalf of anybody else.

5 And I'm confident as well we will try and keep the
6 pages down as much as possible as well. We want you to be able
7 to read it and see the issues we will highlight and don't want
8 to have to unnecessarily wade into unnecessary pages as well,
9 so --

10 MR. KIVETZ: And we would agree with Mr. Hirst's
11 sentiment. So, you know, we would certainly be open to
12 speaking to Mr. Ainsworth and Ms. Bonjean, but we inevitably
13 will likely be filing a summary judgment motion as well.

14 MR. AINSWORTH: It's just that in this case, we've
15 got a defendant on the 5th, we've got the main witness -- the
16 only witness at trial to implicate plaintiffs has said, you
17 know, it was a -- "It was an entire lie, and I was put up to it
18 by the defendants." And so it's a kind of case where, you
19 know, we will discuss, but I welcome the Court to set some kind
20 of framework where we might be able to have a more formal
21 discussion with the Court about the merits of engaging in this.

22 THE COURT: I think there might be some benefit to
23 everybody if we were to talk about what summary judgment
24 theories the individual defendants are planning on offering
25 before you've put -- you finalize pen to paper and the briefs

1 have been filed and the 56.1 statement has been amassed.

2 Before you do that, let's talk about what you really
3 intend to do, and I may be able to give you some guidance in a
4 way that preserves arguments for you without having to do the
5 briefing. And that may be an option, or I may end up saying
6 I'm going to need to read at least some briefs on this. But
7 it's an absolutely fair point, and I am certainly open to it.

8 Why don't we set some time in that second week of
9 June, once you're done and you've had a couple of days to think
10 about everything that you've done over the course of discovery,
11 and we can talk about what your plans are. And let's do it at
12 a little bit of an off-time.

13 THE CLERK: Sure. Everyone, how about Tuesday, June
14 11th --

15 MS. ROSEN: I --

16 THE CLERK: Go ahead.

17 MS. ROSEN: Sorry. If we could do it later in the
18 week? I'll be just coming back from out of the country, so I
19 can do later in the week.

20 THE CLERK: Sure. How about Thursday, the 13th at --
21 we could do 10:30.

22 MR. AINSWORTH: Whenever the Court's available.

23 MR. HIRST: That's fine with us.

24 MS. NIKOLAEVSKAYA: Good for the County.

25 THE COURT: Okay. Is there anything else we should

1 cover this morning?

2 MS. ROSEN: No, not from the Defendant City.

3 MR. HIRST: And, Judge, just so we're clear on that
4 conference, because I don't want to overdo it, you just want to
5 have a conversation? You don't want us to do filings in
6 advance or submissions or anything like that? Just to be
7 prepared to talk and go through the issues?

8 THE COURT: Correct.

9 MR. AINSWORTH: And we should meet and confer in
10 advance of that conference.

11 THE COURT: Yes.

12 MR. AINSWORTH: Okay.

13 THE COURT: Go ahead and give the plaintiffs a
14 preview of what you're planning on raising by way of summary
15 judgment and then both sides can talk to me about it and I can
16 tell you what I think.

17 MR. HIRST: Very good.

18 MR. AINSWORTH: And we're going to go see Judge Cox
19 now.

20 THE COURT: Okay. Thank you.

21 MR. AINSWORTH: And --

22 MS. ROSEN: Thank you, Judge.

23 MR. AINSWORTH: And just to let you know regarding
24 Ms. Bonjean. When we agreed to move the status, she believed
25 that her trial, which is starting today, was going to be

1 continued because the defense counsel had a conflict in that
2 case. The judge denied the motion to continue, and here we
3 are. So apologies to the Court.

4 THE COURT: That's fine. And my apologies to Ms.
5 Bonjean that we couldn't make arrangements for her to be here.

6 MR. AINSWORTH: All right. Thank you.

7 MS. ROSEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. ZIBOLSKI: Thank you.

10 MR. HIRST: Thank you.

11 MR. KIVETZ: Thank you.

12 (Proceedings concluded.)
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C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the HONORABLE MANISH S. SHAH, one of the Judges of said Court, at Chicago, Illinois, on March 19, 2019.

/s/ Colleen M. Conway, CSR, RMR, CRR

03/19/19

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date